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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

Nos. 639 and 640

J. EDWARD JONES,
Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JAMES M. BECK,
BAINBRIDGE COLBY,
HARRY O. GLASSER,
J. N. SAYE,
H. I. FISCHBACH,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

Nos. 639 and 640

J. EDWARD JONES,

Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

PETITION FOR WRITS OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petitioner, J. Edward Jones, respectfully prays that Writs of Certiorari issue to review final judgments of the Circuit Court of Appeals for the Second Circuit, the decisions and opinions in which were filed on November 4th, 1935, and upon which petition for rehearing was denied November 21st, 1935.

Statement of the Matters Involved.

The petitioner, J. Edward Jones, is a citizen of the State of New York. He resides in Scarsdale, County of Westchester, State of New York, and has his principal place of business at 342 Madison Avenue, City, County and State

of New York, both of such addresses being within the jurisdiction of the United States Circuit Court of Appeals for the Second Circuit.

The respondent is an administrative tribunal organized and existing under and by virtue of Section 4 of the Securities Exchange Act of 1934 (48 Stat. 885, 15 U. S. C. A., 78d).

On May 4, 1935, the petitioner filed with the respondent, a registration statement upon a proposed issue of participation trust certificates of proportionate ownerships in producing oil wells, for a total authorization of 1,000 certificates at the aggregate offering price of One Hundred Thousand Dollars ($100,000.00), pursuant to Section 6(a) of the Securities Act of 1933. (15 U. S. C. A. 77f) (R. Case No. 639, p. 9-89). Said registration statement, if action had not been taken with regard thereto by the respondent, would have become effective the twentieth day after the filing thereof. (Section 8(a) Securities Act of 1933; 15 U. S. C. A. 77h(a)).

However, on May 23, 1935, the day before said registration statement would have become effective, the respondent sent a telegram to the petitioner in which it was stated (in substance), that it appeared to the respondent that said registration statement included untrue statements of material facts and omitted to state material facts required to be stated therein and material facts necessary to make the statements therein not misleading. The petitioner was also informed that a hearing upon the matter would be held at the office of the respondent in Washington, D. C., at 10 A. M., Thursday, June 6, 1935, at which time and place the petitioner might appear and show cause why a stop order should not be issued suspending the effectiveness of such registration statement (R. Case No. 639, p. 90-91). The hearing was continued until June 18, 1935. On June 13,

1935, George C. Mathews, one of the Commissioners, issued a subpœna duces tecum, commanding the petitioner to appear before William Green, an officer of the Securities and Exchange Commission, at the office of the Commission in Washington, D. C., on the 18th day of June, 1935, at 10 o'clock A. M. of that date, to testify with reference to his registration statement and to bring with him certain books and records specified in the subpœna (R. Case No. 639, p. 91-92). The petitioner appeared at the hearing on June 18th, 1935, by counsel. He did not appear in person. His counsel stated orally to the examiner who was conducting the hearing that the petitioner was formally withdrawing his registration statement (R. Case No. 639, p. 121). The examiner denied the right to withdraw the registration statement, and proceeded with the hearing (R. Case No. 639, p. 121-150). The hearing was not concluded on June 18, but was adjourned until June 27, 1935 (R. Case No. 639, p. 150-151).

On June 18, 1935, William Green, an officer of the respondent, issued a subpœna to the petitioner requiring him to appear before said officer at the office of the respondent in Washington, D. C., on the 27th day of June, 1935, to testify in the matter of the hearing on the registration statement of the petitioner (R. Case No. 639, p. 99).

The petitioner refused to obey this subpœna in person. His counsel appeared at said hearing, specially and for the purpose of dismissal only, and presented to the presiding officer a motion, signed and sworn to by the petitioner, dismissing and withdrawing his registration statement. This motion was denied by the respondent (R. Case No. 639, p. 180). His counsel then filed another motion to dismiss the registration statement, which was signed by counsel and sworn to by petitioner (R. Case No. 639, p. 101-103). This motion also was denied by the respondent (R. Case No. 639, p. 180).

Through his counsel, petitioner then presented to the officer presiding at said hearing a motion to quash the subpœna which had been issued by said officer and served upon the petitioner. This motion was signed by petitioner's counsel, but sworn to by him (R. Case No. 639, p. 103-105). It was likewise denied by the respondent (R. Case No. 639, p. 180-181).

Through his counsel, petitioner then presented to the respondent an objection to the jurisdiction of the respondent to proceed further in the matter, which document was signed by the petitioner's counsel but sworn to by the petitioner (R. Case No. 639, p. 105-108). This objection was overruled by the respondent. (R. Case No. 639, p. 181), to all of which proceedings the petitioner asked and was granted exceptions.

The Securities Act of 1933, before the amendment of 1934, was administered by the Federal Trade Commission (Title 1, Securities Act of 1933, Sub-section 5 of Section 2; 15 U. S. C. A. 77b(5)). By the amendment of June 6, 1934, the duties of the Federal Trade Commission were transferred to the Securities and Exchange Commission, and all orders, rules and regulations which had been issued by the Federal Trade Commission under the Securities Act of 1933 were continued in full force and effect until superceded, revoked or repealed by the Securities and Exchange Commission. (June 6, 1934, c. 404, Section 210, 48 Stat. 908; 15 U. S. C. A. 78ii.) The respondent, in issuing the aforesaid orders, relied as its authority upon a *rule*, termed Release No. 47, which had been promulgated and issued by the Federal Trade Commission. That part of Release No. 47 which is pertinent to the issues herein involved reads:

> "Any registration statement or amendment thereto may be withdrawn upon the request of the registrant if the Commission consents thereto. * * * Such consent shall be given by the Commission with due re-

gard to the public interest and the protection of investors."

Being aggrieved by the aforesaid orders of the respondent, the petitioner, pursuant to Section 9(a) of the Securities Act of 1933 (15 U. S. C. A. 77i(a)), filed a petition in the United States Circuit Court of Appeals for the Second Circuit, praying for a review thereof (R. Case No. 639, p. 2-7).

The Circuit Court of Appeals dismissed the petition for review on the ground that it was authorized under the Securities Act to review final orders of the respondent only, and held that the orders mentioned above were not *final* orders, as contemplated by said Act.

Stay order not having been issued by the Circuit Court of Appeals when the petition for review was filed in that court, the respondent proceeded under Sub-section (b) of Section 9 of the Securities Act (15 U. S. C. A. 77i(b)).

After the petitioner had filed his petition for review in the Circuit Court of Appeals, the respondent, pursuant to Section 22(b) of the Securities Act of 1933 (15 U. S. C. A. 77v(b)), on July 3, 1935, filed an application in the District Court of the United States for the Southern District of New York for an order requiring the petitioner to appear before William Green, an officer of the Securities and Exchange Commission, there to give evidence in the hearing and examination entitled, in the matter of the registration statement of J. Edward Jones, File 2-1408-1 (R. Case No. 640, p. 3-23).

In response to a rule to show why the respondent's application should not be granted by the District Court, the petitioner appeared in that court and challenged:

(1) the jurisdiction of the court to require obedience to the subpœna of the respondent, because of the proceedings pending in the Circuit Court of Appeals to review the act

of the respondent in denying the petitioner the right to withdraw his registration statement;

(2) the authority of the respondent to issue a subpœna to compel petitioner's attendance;

(3) the validity of the orders of the respondent denying the right to withdraw his registration statement and in overruling his various motions to withdraw and dismiss the proceedings before the respondent, and in refusing to quash the subpœna issued by the respondent and served upon petitioner;

(4) the validity of Federal Trade Commission's Release No. 47, as (a) being unauthorized by the Securities Act of 1933, and, (b) because it had not been published as required by Section 19(a) of the Act (15 U. S. C. A. 77s), and (c) because the release contained no findings of fact to show that such rule was (or is) necessary to carry out the provisions of the Act;

(5) the validity of the respondent's orders denying the petitioner's motions to dismiss and withdraw his registration statement were further challenged because no finding of fact was made by the respondent in making said orders, which would bring them within an exception to that part of Release No. 47 which requires that the respondent's consent to an application to withdraw a registration statement be given with due regard to the public interest and the protection of investors;

(6) the validity of the Securities Act of 1933, as amended, because:

(a) it is an unlawful attempt upon the part of the Congress to delegate its legislative powers to respondent;

(b) it is an attempt upon the part of the Congress to regulate the purchase and sale of securities and the acts and conduct of those engaged in that business, in violation of the 10th Amendment to the Federal Constitution;

and,

(c) the act, as construed and applied by the respondent, violates the 4th and 5th Amendments to the Federal Constitution.

The District Court overruled all of the aforesaid contentions of the petitioner, held Release No. 47 to be authorized by the Securities Act, that it had been properly promulgated and issued by the respondent, and was a valid rule; that the respondent was authorized, under the Act and under said rule, to deny petitioner's motions to dismiss his registration statement, and held that the Securities Act was a proper exercise of Congressional authority under Article 1, Section 8, of the Federal Constitution, which confers upon the Congress power (1) to regulate commerce with foreign nations and among the several states, and (2) to establish post offices and post roads, and ordered the petitioner to obey the respondent's subpœna.

The petitioner duly prosecuted an appeal from the order of the District Court to the Circuit Court of Appeals for the Second Circuit. That court consolidated the petition for review and the case on appeal.

The Circuit Court of Appeals dismissed the petition for review on the ground that the orders of the respondent denying the petitioner's motions to dismiss and withdraw his registration statement and to quash the subpœna served upon him were not orders which the petitioner was entitled to have reviewed by that court under Section 9(a) of the Securities Act (15 U. S. C. A. 77i(a)). In the case

which was appealed from the District Court, the Circuit Court of Appeals upheld the validity of Release No. 47 and the orders of the respondent denying the various motions of the petitioner to withdraw and dismiss his registration statement, the order refusing to quash the subpœna served upon him, and upheld the Securities Act as a valid exercise of power by the Congress under Article 1, Section 8, of the Federal Constitution, which confers on the Congress the power to establish post offices and post roads. The Circuit Court of Appeals pretermitted a decision upon the question as to whether or not the Securities Exchange Act could be sustained under the commerce clause of the Federal Constitution as being unnecessary to a determination of the case at bar. The appellate court affirmed the order of the lower court directing the petitioner to appear before the Commission and testify in accordance with its subpœna (Opinion of Circuit Court of Appeals, R. Case No. 640, p. 179-185).

A petition for rehearing was duly filed in the Circuit Court of Appeals and denied (R. Case No. 640, p. 187).

Reasons Relied On for Allowance of Writs.

I.

The United States Circuit Court of Appeals has, in these cases, decided important questions of Federal law which have not been, but should be, settled by this Court.

II.

The United States Circuit Court of Appeals, in these cases, has decided Federal questions in a way probably in conflict with applicable decisions of this Court.

III.

The questions involved in these cases are matters of great importance because they involve the administration of the

Securities Act of 1933, as amended, which Act, if permitted to stand, affects the substantial rights of not only the petitioner, but all other persons, firms and corporations who issue, deal in, sell and purchase securities (with a few exempt securities specified in the Act), by the use of the mails or the instrumentalities of interstate commerce.

IV.

The United States Circuit Court of Appeals has erroneously held:

(a) That the three orders of the respondent denying the petitioner's right to withdraw and dismiss his registration statement, and the order of the respondent refusing to quash its subpœna served upon petitioner, commanding him to appear before it and testify, are not such orders as may be reviewed by the United States Circuit Court of Appeals under Section 9(a) of the Securities Exchange Act of 1933, as amended.

(b) In the case appealed from the United States District Court, that the orders of the respondent mentioned in the preceding paragraph are valid orders, authorized by the Securities Act of 1933, and that their enforcement does not deprive petitioner of his liberty and property in violation of the due process clause of the 5th Amendment to the Federal Constitution.

(c) That Release No. 47 of the Federal Trade Commission is a valid rule authorized by the Securities Act of 1933, as amended; that the operation and effect of Release No. 47 does not deprive petitioner of his liberty and property without due process of law.

(d) That, after petitioner dismissed and withdrew his registration statement, there was still pending before the Securities and Exchange Commission a proceeding over

which it had jurisdiction and in which it could compel the petitioner to appear and testify.

(e) That after petitioner had dismissed and withdrawn his registration statement, there was still pending before the Securities and Exchange Commission a proceeding in which the District Court could compel the petitioner to obey the subpœna of the respondent and appear before it and testify pursuant to Section 22(b) of the Securities Exchange Act of 1933, as amended.

(f) That "it is not an unreasonable method of preventing the use of the mails to promote and consummate the sale of misrepresented securities to require that all securities, before mails are used, must be registered."

(g) That the Securities Act of 1933, as amended, is not an invasion of the rights of the States by the Congress, contrary to the 10th Amendment to the Federal Constitution.

(h) That the penalties and punishments sanctioned for a violation of the Securities Exchange Act of 1933, as amended, and for violation of the rules and regulations of the Securities and Exchange Commission, are not so severe and drastic that they are designed and calculated to, and do, affright and deter those affected by the Act and such rules and regulations, from asserting their rights in the courts of justice, in violation of the 5th Amendment to the Federal Constitution.

Eleven certified copies of the entire record in each of the cases in the said Circuit Court of Appeals are hereby furnished, attached to and made a part of this application and marked Exhibit A, in compliance with Rule 38 of this Honorable Court.

WHEREFORE, your petitioner respectfully prays that writs of certiorari be issued out of and under the seal of

this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case entitled on its docket, "J. Edward Jones, Petitioner, against Securities and Exchange Commission, Respondent," and a full and complete transcript of the record and all proceedings in the case entitled on its docket, "Securities and Exchange Commission, Applicant-Appellee, against J. Edward Jones, Respondent-Appellant," and that said decrees of the United States Circuit Court of Appeals may be reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

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BRIEF.

I.

The Opinions of the Courts Below.

The opinions of the courts below have not been reported. The opinion of the District Court appears in the record of Case No. 640, at pages 154-164. The opinion of the Circuit Court of Appeals in the same case is dated November 4, 1935, and appears in the record of Case No. —, at pages 179 to 185. The opinion of the Circuit Court of Appeals in Case No. 639 is also dated November 4, 1935, and appears in the record of Case No. 639 at pages 184 to 191.

II.

Jurisdiction.

1. The dates of the decrees of the Circuit Court of Appeals are November 4, 1935 (R. Case No. 639, p. 184-191; R. Case No. 640, p. 179-185). The petition for rehearing was filed November 18, 1935. It was denied November 21, 1935 (R. Case No. 639, p. 192; R. Case No. 640, p. 187).

2. Petitioner asserts that the Circuit Court of Appeals erred in holding:

(a) that the three orders of the respondent denying the petitioner's right to withdraw and dismiss his registration statement, and the order of the respondent refusing to quash its subpœna served upon petitioner, commanding him to appear before it and testify, are not such orders as may be reviewed by the United States Circuit Court of Appeals under Section 9(a) of the Securities Act of 1933, as amended;

(b) in the case appealed from the United States District Court, that the orders of the respondent mentioned

in the preceding paragraph are valid orders, authorized by the Securities Act of 1933, and that their enforcement does not deprive petitioner of his liberty and property in violation of the due process clause of the 5th Amendment to the Federal Constitution;

(c) that Release No. 47 of the Federal Trade Commission is a valid rule authorized by the Securities Act of 1933, as amended; that the operation and effect of Release No. 47 do not deprive petitioner of his liberty and property without due process of law;

(d) that, after petitioner had dismissed and withdrawn his registration statement, there was still pending before the Securities and Exchange Commission a proceeding over which it had jurisdiction and in aid of which it could issue a subpœna and compel the petitioner to appear and testify;

(e) that, after petitioner had dismissed and withdrawn his registration statement, there was still pending before the Securities and Exchange Commission a proceeding in which the District Court could compel the petitioner to obey the subpœna of the respondent and appear before it and testify pursuant to Section 22(b) of the Securities Act of 1933, as amended.

(f) that "it is not an unreasonable method of preventing the use of the mails to promote and consummate the sale of misrepresented securities to require that all securities, before mails are used, must be registered;"

(g) in holding that the respondent might compel the petitioner to take advantage of the opportunity afforded him for a hearing under Subsections (b) and (d) of Section 8 of the Securities Act, and attend such

hearings and give testimony, instead of issuing the stop order therein provided for, if the petitioner elected to waive advantage of the opportunity afforded in said sub-sections for a hearing, especially when at the time none of the participation trust certificates had been sold to the public and the rights of no innocent underwriter had become affected;

(h) that the Securities Act of 1933, as amended, is not an invasion of the rights of the States by the Congress, contrary to the 10th Amendment to the Federal Constitution;

(i) that the penalties and punishments sanctioned for a violation of the Securities Act of 1933, as amended, and for violations of the rules and regulations of the Securities and Exchange Commission, are not so severe and drastic that they are designed and calculated to, and do, affright and deter those affected by the Act and such rules and regulations, from asserting their rights in the courts of justice, in violation of the 5th Amendment to the Federal Constitution.

3. The jurisdiction of the Supreme Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925; and Supreme Court Rule No. 38.

III.

Statement of the Case.

A full statement is set forth in the petition under heading, "Statement of Matters Involved."

IV.

Specification of Errors.

For the sake of brevity, petitioner adopts as his specification of errors the assignments under IV, in the "State-

ment of Matters Involved'' in his petition, and under Subsection 2, heading II, of this brief.

V.

Summary of Argument.

Point A. The Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court.

Point B. The Circuit Court of Appeals has decided a Federal question of law probably in conflict with applicable decisions of this Court.

Point C. The questions involved in this case are matters of great importance because they involve the administration of the Securities Act of 1933, as amended, which Act, if permitted to stand, affects the substantial rights of not only the petitioner, but all other persons, firms and corporations who issue, deal in, sell and purchase Securities (with a few exempt securities specified in the Act), by the use of the mails, or the Instrumentalities of Interstate commerce.

Point A.

The Securities Act of 1933, as amended, is another piece of novel legislation. To say the least, it is a radical departure from what we have heretofore understood to be time-honored American traditions. It is unquestionably an attempt by the National Government to exercise powers heretofore universally believed to have been reserved to the States.

It creates and vests in the National Government new and virtually unlimited powers of regulation of the minutest details of the business and affairs of men who issue, purchase and sell securities. If upheld in its entirety, it wipes

out State lines and destroys our dual system of government.

It is respectfully submitted, therefore, that the construction of each provision of the Act is of the utmost importance, and calls for the supervisory powers of this Court. (Printed copy of the Act as amended, has been supplied as Appendix A to this brief.)

POINT B.

The decisions of the Circuit Court of Appeals are in conflict with the applicable decisions of this Court in the following respects:

First: It is at once apparent from a reading of the Securities Act of 1933, as amended, that it does not regulate the use of the mails, nor does it regulate interstate commerce among the States and with foreign nations, but it does, in its operation and effect, regulate the issuance and the sale and the purchase of securities under the guise of regulating the mails and interstate commerce, which is a prohibited exercise of power by the National Government, in violation of the 10th Amendment to the Federal Constitution.

Brooks v. *United States,* 267 U. S. 432, 45 S. Ct. 345;

Hammer v. *Dagenhart,* 247 U. S. 251, 38 S. Ct. 529.

Second: The Securities Exchange Act of 1933, as amended, does not deal with *things* mailed, but with the action and conduct of persons using the mails; and "any legislation excluding from the mails must apply directly to the *things* mailed, not the persons using the mails." (Rogers' "The Postal Power of Congress", Johns Hopkins Press, Series XXXIV, No. 2, page 172.)

See *Ex Parte Jackson,* 96 U. S. 727.

Third: Trust Certificates, such as are covered by petitioner's registration statement in the case at bar, are not commodities in the sense that they may be the subject of commerce among the States or with foreign nations.

Insurance policies and contracts are not commodities which may be the subject of interstate commerce.

Paul v. *Virginia,* 8 Wallace 168;
Dukat v. *Chicago,* 10 Wallace 410;
Liverpool Ins. Co. v. *Massachusetts,* 10 Wallace 56;
Philadelphia Fire Assoc. v. *New York,* 119 U. S. 110;
Hooper v. *California,* 155 U. S. 648;
Noble v. *Mitchell,* 164 U. S. 367;
New York Life Ins. Co. v. *Cravens,* 178 U. S. 389;
Nutting v. *Massachusetts,* 183 U. S. 553;
New York Life Ins. Co. v. *Deer Lodge County,* 231 U. S. 495.

A broker who uses the mails in buying and selling foreign bills of exchange is not engaged in interstate commerce, but in supplying an instrument of commerce.

Nathan v. *Louisiana,* 8 Howard 73.

A Massachusetts Trust doing a business of buying and selling negotiable notes in various States, was held not to be engaged in interstate commerce.

Hemphill v. *Orloff,* 277 U. S. 537;
See *Graniteville Manufacturing Co.* v. *Query,* 44 F. (2d) 64.

Fourth: The authority of the Securities and Exchange Commission to make the three orders which it

did make denying the petitioner the right to withdraw and dismiss his registration statement, if done under Release No. 47, requires, in order that such orders shall be effective, a determination of facts which will clearly set forth that to permit dismissal and withdrawal would affect adversely and injuriously the public interest, and would fail to protect investors.

Panama Refining Co. v. *Ryan,* 293 U. S. 388;
Wichita Railroad & Lt. Co. v. *Public Utilities Commission,* 240 U. S. 48, 59;
Schechter Poultry Corp. v. *United States,* 55 S. Ct. 837.

Fifth: Under the authorities cited under the preceding paragraph, in order to give to Release No. 47 validity, the determinations of fact upon which it was bottomed would have to be recited in the order. Such findings are not there.

Sixth: Section 19(a) of the Securities Act of 1933 provides that "the rules and regulations of the Commission shall be effective upon publication in the manner in which the Commission shall prescribe". The Commission has prescribed no manner in which its rules and regulations shall be effective, hence it would appear that for another reason the Circuit Court of Appeals erred in holding that Release No. 47 is valid, and the holding is contrary to the elementary rule that a commission which is the creature of a statute must draw its power from the statute.

Seventh: The right of a plaintiff to dismiss a lawsuit which he has filed, in the absence of statutory inhibitions or court rules to the contrary, is absolute, and when the Securities and Exchange Commission denied the petitioner his right to dismiss his regis-

tration statement, it deprived him of the right without due process of law.

Cybur Lumber Co. v. *Erkhart,* 247 Fed. 284;
Barrett v. *Virginia R. R. Co.,* 250 U. S. 473;
Ex parte Skinner & Eddy Corp., 265 U. S. 87.

POINT C.

The Court will quickly perceive, from a casual review of the record, that the matters involved in this case are of great public importance, because unless a registration statement has been filed with the respondent and is in effect as to a security, it is unlawful for any person, directly or indirectly, (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails, to sell or offer to buy such securities through the use or medium of any prospectus or otherwise; or (2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purchase or sale or for delivery after sale; and it is unlawful for any person, directly or indirectly, (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails, to carry or transmit any prospectus relating to any security registered under the Act, unless such prospectus meets the requirements of Section 10 thereof; or (2) to carry or cause to be carried, through the mails or in interstate commerce, any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of Section 10 (Section 5, Securities Act of 1933).

A review of Sections 6, 7, 8, 10, 11, 12, 15, 17, 19, 23 and 24 and Schedule A of the Securities Act of 1933 will impress upon the Court the unusual requirements, restric-

tions, penalties and exactions imposed upon individuals, firms and corporations who are engaged in the business of issuing, buying and selling securities, and which so supervises and controls in detail their everyday business affairs as to forcibly impress upon one's mind the proposition that the Congress, by the Act, is not regulating interstate commerce or the use of the mails, but is usurping the power of the states, in violation of the 10th Amendment to the Federal Constitution, and a review and determination of the matter by this Court, in the interest of the public, is required.

If this Court should find that the Securities Act of 1933, as amended, is within the constitutional power of the Congress, still the interpretation placed upon the Act by the respondent, to the effect that a registrant, once he has filed a registration statement with the respondent, may not voluntarily withdraw it if, as in this case, he asks that he be permitted to do, before any of the proposed issue of securities had been sold to the public, or the rights of the public or underwriters have attached thereto, so that they would not be adversely affected by the withdrawal, is so far-reaching and so contrary to the well established principles of American jurisprudence, that the interest of the public requires that the matter be reviewed and proper directions given by this Court.

In this argument we are fully supported by the decisions of this Court in the following cases:

Montana Mining Co. v. *St. Louis Mining & Milling Co. of Montana,* 204 U. S. 204; 27 S. Ct. 254;

International Railway Co. v. *Davidson,* 257 U. S. 506, 42 S. Ct. 179.

We believe it unnecessary, for the purposes of this petition, to argue the detailed specification of errors assigned in paragraph IV under Section B of the petitioner's appli-

cation, as we believe that our arguments under Points A, B and C, of the Brief, sufficiently establish this Court's jurisdiction of the case and the importance of and necessity for the granting of the writ.

Conclusion.

It is therefore respectfully submitted, that this case is one calling for the exercise by this Court of its supervisory power, in order that the petitioner may have the relief which was denied by the District Court and by the Circuit Court of Appeals, and that to such end writs of certiorari should be granted that this Court may review and thereafter reverse the decisions of the United States Circuit Court of Appeals.

Respectfully submitted,

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